

**SEWARD & KISSEL LLP**

ONE BATTERY PARK PLAZA  
NEW YORK, NEW YORK 10004

BRUCE G. PAULSEN  
PARTNER  
(212) 574-1533  
paulsen@sewkis.com

TELEPHONE: (212) 574-1200  
FACSIMILE: (212) 480-8421  
WWW.SEWKIS.COM

901 K STREET, NW  
WASHINGTON, DC 20001  
TELEPHONE: (202) 737-8833  
FACSIMILE: (202) 737-5184

February 12, 2019

**VIA ECF AND EMAIL**

Hon. Andrew L. Carter, Jr.  
United States District Court  
Southern District of New York  
40 Foley Square, Room 435  
New York, NY 10007  
([ALCarterNYSDChambers@nysd.uscourts.gov](mailto:ALCarterNYSDChambers@nysd.uscourts.gov))

Re: *Commodities & Minerals Enterprise Ltd. v. CVG  
Ferrominera Orinoco, C.A.*, No.16-cv-861

Dear Judge Carter:

We represent Plaintiff Commodities & Minerals Enterprise Ltd. (“CME”). We write in response to Defendant CVG Ferrominera Orinoco, C.A.’s (“FMO”) letter dated February 11, 2019, requesting until February 26, 2019 to submit its response to the Court’s Order to Show Cause regarding CME’s Motion to Lift the Stay and Transfer Funds into Escrow Pursuant to a Judgment of a United States District Court (the “Motion”). FMO’s proffered reason for this request – a change in FMO’s general counsel who is now reconsidering FMO’s prior litigation strategy of “take no action” – is plainly insufficient. Accordingly, CME respectfully requests that the Court deny FMO’s request.

As the Court may recall, CME requested permission to file the Motion by letter dated November 9, 2018. *See* ECF No. 107. FMO did not respond to CME’s letter. The Court scheduled a pre-motion conference for December 12, 2018. *See* ECF No. 108. FMO did not attend. The Court subsequently entered an order directing CME to file the Motion by no later than December 21, 2018, with FMO’s response due on January 22, 2019. *See* ECF No. 109. CME timely filed the Motion, but FMO did not respond by the Court’s deadline to do so. By Order to Show Cause, dated February 5, 2019, the Court gave FMO one last chance – until February 12, 2019 – to establish “why Plaintiffs’ motion should not be treated as unopposed.” *See* ECF No. 113.

On the day before FMO’s response to the Order to Show Cause was due, the arbitration panel in the underlying U.S. arbitrations issued final awards finding FMO liable to CME in the total amount of \$200,519,172.80. Fifteen minutes later, counsel to CME received a message to

Hon. Andrew L. Carter, Jr.

February 12, 2019

Page 2

call FMO's counsel, the first such contact in many months, as FMO had ceased participation in the underlying arbitration proceedings since August 2018 (and failed to pay several hundreds of thousands of dollars due to the arbitrators). Approximately thirty minutes thereafter, and before CME's counsel could return the call, FMO filed its letter requesting additional time to respond to the Court's Order to Show Cause.

In the letter, FMO's counsel states that it has been seeking instructions from its client "[f]or some time now," but with no avail, and in the absence of instructions, FMO's counsel was "specifically told to take no action." FMO has known of the Motion since CME's pre-motion letter more than three months ago, but has failed to submit any opposition, appear at a court-ordered conference, or, until yesterday, advise the Court that it was awaiting instructions. That FMO now has a new general counsel, who is apparently reconsidering its prior litigation strategy, cannot excuse its prior defaults and justify granting it additional time to respond to the Court's Order to Show Cause.

For these reasons, we respectfully request that the Court deny FMO's request and treat the Motion as unopposed.

Respectfully yours,

/s Bruce G. Paulsen  
Bruce G. Paulsen